IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5374 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GIRVATSINH PRABHATSINH

Versus

DIRECTOR GENERAL OF POLICE

Appearance:

MR SUNIL K SHAH for Petitioner

MS MANISHA LAVKUMAR A.G.P. for Respondent Nos.1,2,3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 02/03/2001

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitoner an Unarmed Head Constable in the Ahmedabad City Police had challenged the order dated 10/08/1992 passed by the Dy. Police Commissioner, Ahmedabad suspending the petitioner from service. The Dy. Police Commissioner reiterated the previous order dated 21/04/1992 suspending the petitioner from service on the ground that the petitioner had assaulted Police Sub-inspector, G.J.Chaudhary when he was on duty and had

indulged in abusive language. It was mentioned in the suspension order that since investigation was pending, the order of suspension will remain in force till the Court case or the departmental inquiry were over. The petitioner had earlier challenged the suspension order dated 21/04/1992 wherein the Court passed an order that the applicant was required to make a representation to the concerned authority. The petitioner's representation came to be turned down by order dated 10/08/1992. Hence this petition. On 29/09/1992, this Court granted mandatory interim relief in favour of the petitioner

2. Mr.Sunil K. Shah, learned Counsel for the petitoner states that on the basis of the incident in question allegedly occurred on 21/04/1992, criminal complaints bearing C.R. Nos. 269/92 and 416/92 1992 had been filed against the petitioner. The petitioner challenged the said criminal complaints in Misc. Criminal Application No.1848 of 1992 wherein this Court granted interim stay of further proceedings pursuant to the aforesaid complaints. The learned Counsel had already placed on record the copy of the order dated 25/5/1992 passed by this Court in Misc. Cri. Application No.1848 of 1992. He further states that the aforesaid Misc. Criminal Application is still pending and the ad-interim stay granted earlier by this Court on 12/01/2001 still continues to operate. The learned Counsel for the petitioner further states that no departmental inquiry is instituted against the petitioner in respect of the incident in question.

3. In view of the above developments and in view of the interim order granted by this Court while admitting the petition on 29th September, 1992 which was of mandatory nature and L.P.A. No.126 of 1993 against that order having been dismissed by the Division Bench of this Court, it appears to the Court that no useful purpose will be served by adjourning the hearing of this petition till disposal of Misc. Criminal Application No.1848 of 1992, when no departmental inquiry has been instituted against the petitioner for the last more than 8 years.

4. Hence, the following order is passed :

The petition is allowed.

The impugned order of suspension dated 21/04/1992 annexure 'D' and the order dated 10/08/1992 annexure 'I' are hereby quashed and set aside, without prejudice to the power and authority of the respondents to continue to prosecute Misc. Criminal Application No.1848 of 1992 and

other Criminal proceedings which may be pending against the petitioner in respect of the incident in question which resulted into the order of suspension.

The respondents shall treat the petitioner as in continuous service without giving any break on the basis of the order of suspension dated 21/04/1992 for any purpose.

Rule is made absolute accordingly with no order as to costs.

(M.S. Shah, J)
(Katira)